



बिहार गजट

असाधारण अंक

बिहार सरकार द्वारा प्रकाशित

14 भाद्र 1939 (श0)

(सं0 पटना 806) पटना, मंगलवार, 5 सितम्बर 2017

निर्वाचन विभाग

अधिसूचना

4 सितम्बर 2017

सं0 एम1-009/2014-41—निर्वाचन अर्जी सं0 4/2014 से संबंधित भारत निर्वाचन आयोग, नई दिल्ली की अधिसूचना संख्या-82/ई एस-1/ई पी/(4/2014)/बी आर-एच पी/2017 दिनांक 08.08.2017 सर्वसाधारण की जानकारी के लिए पुनः प्रकाशित की जाती है।

बिहार—राज्यपाल के आदेश से,
सोहन कुमार ठाकुर,
अपर सचिव।

भारत निर्वाचन आयोग

अधिसूचना

निर्वाचन सदन, अशोक रोड, नई दिल्ली-110001/तारीख 8 अगस्त, 2017/17 भाद्रपद, 1940 (शक)

सं० 82/ES-1/EP/(4/2014)/BR-HP/2017 : लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106(ख) के अनुसरण में, निर्वाचन आयोग एतद्वारा निर्वाचन अर्जी सं० 4/2014 में दिये गये उच्च न्यायालय, पटना के तारीख 21 जून, 2017 के आदेश को प्रकाशित करता है।

IN THE HIGH COURT OF JUDICATURE AT PATNA

Election Petition No.4 of 2014

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Ram Niranjana Roy son of Shri Rameshwar Roy, resident of N6, Officers' Flat,
New Punaichak, Patna-23 and President of Rasshtravadi Loktantrik Party

Petitioner/s

Versus

1. The State of Bihar through Chief Secretary (Deleted)
2. Dr. Pratima, Returning Officer, 05- Sitamarhi Parliamentary Consistency-cum District Magistrate, Sitamarhi (Bihar)
3. Chief Electoral Office, 7 Mangals Road, Patna (Deleted)
4. Chief Election Commissioner, Nirvachan Sadan, Ashoka Road, New Delhi (Deleted)
5. Principal Secretary, Home (Police) Department, Government of Bihar, Patna (Deleted)
6. Ram Kumar Sharma son of Mahesh Prasad Sharma, Village- Nanpur, TolaBegaha, P.O.-Sirsi, P.S.-Nanpur, District- Sitamarhi, the returned candidate

Respondent/s

Appearance :

For the Petitioner/s Mr. Ram Niranjana Roy (in person)

For the Respondent No. 2: Mr. Sidharth Prasad

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR**CAV JUDGMENT****Date: 21 -06-2017**

1.The present application was filed under Section 80, 80A and 81 of the Representation of People Act, 1951 (hereafter referred to as the "R.P. Act") read with Article 329(b) of the Constitution of India for the following reliefs:-

- (i) *To hold and declare that the rejection of nomination papers nos. 38 and 39 of the petitioner by Returning Officer —cum- District Magistrate, Sitamarhi/ Respondent No. 2 in the said election is bad in law and fit to be set aside.*
- (ii) *To hold and declare the election of the returned candidate/ Respondent No. 6 front (15-SitamrhiParliamentary Constituency void.*
- (iii) *To hold and declare that pursuant to the election for 05-Sitamarhi Parliamentary constituency being void, the Election Commission Of India shall hold fresh election for it."*

2. Short fact of the case is that the petitioner was a Candidate for election of Lok Sabha, which was schedule to be held in the year 2014 for 05 -

Sitamarhi Parliamentary Constituency. The election process was initiated on 12.04.2014 and election was held on 07.05.2014. Thereafter, result was declared on 16.05.2014. The petitioner had filed nomination paper on 19.04.2014 as a candidate of Rashtravadi Loktantrik Party for the said election. The petitioner was an Officer of Bihar Police Service and also President of Bihar Police Seva Sangh. He was lastly posted as Deputy Superintendent of Police, Criminal Investigation Department, Bihar, Patna. It has been stated in the petition that he was fighting for his promotion to the rank of Superintendent Of Police and to the Cadre of Indian Police Service on the plea that Officers of his batch were already promoted to the rank of Superintendent of Police as well as to the Cadre of Indian Police Service. The election petitioner vide his letter dated 31.12.2013 addressed to the Principal Secretary, Home (Police) Department, Government of Bihar intimated for voluntary retirement with effect from 31.03.2014 after granting him promotion to the rank of Superintendent Of Police from 03.02.2009. The said application for voluntary retirement was given three months before, but since he received no response from the Department in respect of his intimation of voluntary retirement, he sent another letter on 25.02.2014 to the Principal Secretary, Home (Police) Department, Government of Bihar stating therein that he was resigning from his post after 31.03.2014, if application for voluntary retirement was not accepted by the Government. Thereafter, the petitioner was informed vide letter no. 2165 dated 12.03.2014 issued by the Deputy Secretary, Home (Police) Department, Bihar that his application for voluntary retirement was conditional and the post of Superintendent Of Police belongs to the Cadre of Indian Police Service. The petitioner thereafter replied and reiterated that he may be allowed voluntary retirement with effect from 31.03.2014 after giving him promotion to the post of Superintendent Of Police, or otherwise, he would resign from his post after 31.03.2014. Thereafter, the petitioner tendered his resignation from his post on 01.04.2014 and he joined a Political Party named as Rashtravadi Loktantrik Party on 02.04.2014. He decided to contest the Parliamentary Election of 2014 from 05- Sitamarhi Parliamentary Constituency and he filed nomination papers on 19.04.2014 as a candidate of Rashtravadi Loktantrik Party before the Returning Officer- cum - District Magistrate, Sitamarhi. Along with his nomination papers he attached photo copy of resignation - letter. Thereafter, the Returning Officer issued a *check- list* on 19.04.2014 itself. It has been pleaded in the petition that as per the *check- list* all required documents were filed with the nomination papers and no document was to be filed further. However, on 21.04.2014 which was the date of scrutiny of the nomination papers, the Returning Officer- cum- District Magistrate, Sitamarhi rejected nomination papers nos. 38 and 39 of the petitioner mentioning therein that petitioner was holding an office of profit on 21.04.2014 under the State Government and he had not submitted papers regarding acceptance of his resignation- letter by the Government. After rejection of nomination papers of the petitioner the election process proceeded and held on scheduled date and in the said election one Sri Ram Kumar Sharma was declared as the returned candidate. Initially, the petitioner, after rejection of his nomination papers, had filed a writ petition vide CWJC No. 8451 of 2014, which stood dismissed on 09.05.2014 primarily on the ground that in view of the provisions contained in Article 329(b) of the Constitution of India in

election dispute writ petition was not maintainable. Thereafter, the petitioner filed the present election petition on 30.6.2014. Initially, the petitioner had arrayed six persons as respondents in the following seriatim:-

- (1) The State of Bihar Through Chief Secretary.
- (2) Dr. Pratima, Returning Officer, 05-Sitamarhi Parliamentary Constituency-cum-District Magistrate, Sitamarhi (Bihar).
- (3) Chief Electoral Officer, 7 Mangals Road, Patna
- (4) Chief Election Commissioner, Nirvachan Sadan, Ashoka Road, New Delhi
- (5) Principal Secretary, Home (Police) Department Government of Bihar, Patna
- (6) Ram Kumar Sharma, son of Mahesh Prasad Sharma, village-Nanpur, Tola-Begaha, P.O.-Sirsi, P.S.-Nanpur, District- Sitamarhi, the returned candidate"

3. Since number of unnecessary persons were added as respondents, the stamp reporter had pointed out defects. Finally, the petitioner with the permission of the court deleted the names of respondent nos. 1, 3, 4 and 5 from the record. The petitioner after filing an affidavit was permitted to appear in person. Finally, by order dated 19.02.2015 after valid service of notice on two surviving respondents, after appearance of respondent no. 2 vide order dated 19.02.2015 the court decided to proceed ex -parte against the returned candidate i.e. Sri Ram Kumar Sharma, who despite valid service of notice had not appeared and after hearing the parties by the said order i.e. the order dated 19.02.2015 following issues were framed:-

- "1. Whether the election petition (correctly petitioner) can be held holding an office of profit on 21.04.2014 under the State Government on the date of filing of his nomination papers i.e. 19.04.2014 for which scrutiny was held on 21.04.2014 justifying rejection of his nomination papers?**
- 2. Whether the nomination paper filed by the election petitioner was improperly rejected by the Returning Officer of 05 Sitamarhi Parliamentary Constituency?**
- 3. Whether the demand of the paper with regard to acceptance of resignation letter of the petitioner by the State Government made by the Returning Officer —cum-District Magistrate was sudden and uncalled for?**
- 4. Whether the letter dated 31.12.2013 was a valid offer of voluntary retirement from the service of the State and the respondent State was bound to accept the same?"**

4. Since in the election petition certain facts were made in paragraph nos. 16 to 20 of the election petition against the Returning Officer, on the prayer of petitioner, he was allowed not to delete the name of respondent no. 2/ Returning Officer- cum - District Magistrate from the record and as such, in the present case the Returning Officer -cum -District Magistrate, Sitamarhi appeared and filed a written statement justifying the rejection of nomination papers of the election petitioner. In the case besides filing list of documents, on behalf of the election petitioner list of witnesses was also filed. The list of witnesses filed by the election petitioner contains the following names :-

(a) List of official witnesses:-

- (i) Dr. Pratima, Returning Officer, 05-Sitmarhi Parliamentary Constituency-cum-District Magistrate, Sitamarhi, (Bihar)/ respondent no. 2
- (ii) Mr. Amir Subhani, Principal Secretary , Home (Police) Department, Government of Bihar, Patna

(b) List of non -official witnesses:-.

- (i) Sri Ravindra Jha, son of Jiwachha Jha , villageParoha, P.O.- Parasauni, P.S. -Dumra, District -Sitamarhi
- (ii) Sri Sanjit Raut, son of Sri Jaikun Raut, Village-Hanuman Nagar, P.O.- Lalpur, P.S. - Nanpur, district - Sitamarhi
- (iii) Sri Neeraj Kumar Son of Sri Rajakumar Jha, village-Paroha, P.O.- Parasauni, P.S.-Dumra, District - Sitamarhi .

5. During trial of the present election petition from the list of witnesses submitted on behalf of the election petitioner only one official witness namely Mr. Amir Subhani, Principal Secretary, Home (Police) Department, Government of Bihar, Patna was examined and cross- examined, however, none of other witnesses mentioned in the list of witnesses submitted on behalf of the petitioner was examined nor the election petitioner bothered to take effective steps for getting them examined as witnesses. Besides one official witness the election petitioner himself got examined as P.W. 2. So far other cited witnesses are concerned, deposition on affidavit of one Sri Ravindra Jha was brought on record, however during trial he was not produced either to identify his signature on his deposition on affidavit, which has been brought on record nor he was tendered for his cross- examination.

6. Since all the four issues, which were framed in the present case are inter-related, all the issues are required to be dealt with conjointly. The election petitioner who has appeared in person has argued that once he had tendered application for his voluntary retirement on 31.12.2013, after expiry of three months even in case of non -acceptance of his application for voluntary retirement, it was deemed to be accepted, and as such, there was no further requirement to produce any document regarding acceptance of his application for voluntary retirement and on 31.03.2014 he had ceased to be a Government Servant. Accordingly, he was not to be treated as disqualified under Article 102(1)(a) of the Constitution of India from contesting the election. To substantiate his submission that after expiry of three months from the date of submission of his application for voluntary retirement he had ceased to be Government Servant, he has placed reliance on a judgment of the Hon'ble Apex Court reported in AIR 1978 SC 17 DINESH CHANDRA SANGMA *Versus* STATE OF ASSAM AND OTHERS. He has argued that after submission of nomination papers i.e. on 19.04.2014, had there been any defect in the nomination papers, those defects were required to be indicated in the *check- list* which was issued by the Returning Officer after submission of nomination papers, nor petitioner was asked to produce any letter either with respect to acceptance of his application for voluntary retirement or acceptance of his resignation-letter. He submits that even after receiving no response regarding acceptance of his voluntary retirement, the petitioner on 1st April , 2014 had tendered resignation- letter, however, the election petitioner was never asked by the Returning Officer to satisfy her regarding the judgments that he was not a Government Servant on the date of filing of nomination papers. According to the election petitioner after issuance of *check- list* on 19.04.2014 suddenly on the date (1)st of scrutiny of nomination papers i.e. on 21.04.2014 the Returning Officer asked him to produce letter of acceptance of his resignation- lett& Though the petitioner requested for granting some time to

apprisIz her with the legal position, his nomination papers in form nos. 38 and 39 was rejected vide Annexure VII and VIIA to the election petition, which has been brought on record along with verification of the election petitioner. He has argued that in view of Section 36 (5) of the R.P. Act it was duty on the part of the Returning Officer to grant some time to enable the election petitioner to satisfy the Returning Officer with the rulings of the Supreme Court, however, contrary to the statutory provisions, his nomination papers were rejected. He has placed reliance on (2012) 1 SCC 762 RAMESH ROUT *Versus* RABINDRA NATH ROUT on the point that had there been any missing documents in the nomination papers, in the *check- list* those facts were required to be incorporated, however on 19.04.2014 after submission of nomination papers the check-list was issued in which no infirmity was shown. He has also placed reliance on **AIR 2001 SC 2583 Shibu Soren v. Dayanand Sahay** on the point that merely on the ground that his resignation was not accepted it will not be deemed that he was holding an office of profit on the date of either submission of nomination papers or scrutiny of nomination papers. Besides the aforesaid judgments the petitioner has also referred other judgments which were noticed by this Court however, considering the fact that those decisions were not having any bearing for adjudication of the present case, this Court is refrained from incorporating all such case laws.

7. In the present case the respondent no. 2/ the Returning Officer —cum-Collector , Sitamarhi has filed a written statement wherein it has been indicated that election petitioner had filed nomination papers as a candidate for election to the House Of People i.e. Lok Sabha for 05- Sitamarhi Parliamentary Constituency on 19.4.2014 in last General Election of 2014 but since the election petitioner had been an officer of Bihar Police Service he was required to submit such documents on the date of filing of nomination papers, which might prove that election petitioner was not continuing on the post of any profit on the date of nomination as a candidate of the General Election to the Lok Sabha, 2014. However, during scrutiny of the nomination papers filed by the candidates for Lok Sabha Election of 2014 it was found that election petitioner had not submitted any document relating to acceptance of his resignation from the Government Service as a proof of discontinuation from the post of profit which the petitioner was holding, so the Returning Officer found that the petitioner cannot be accepted as a candidate for election to the House Of People for 05 - Sitamarhi Parliamentary Constituency as per the provisions laid down under Article 102 (1) (a) of the Constitution of India and hence nomination of the petitioner was rejected by the Returning Officer.

8. During trial of the case in the deposition of P.W. 1, who is official witness and was examined as per list of witnesses submitted by the election petitioner, it is evident that on the date of submission of nomination papers or on the date of scrutiny of nomination papers the petitioner had not ceased to be a Government Servant. In the Examination- in -Chief of P.W. 1 Mr. Amir Subhani, Principal Secretary , Department of Home, lie has stated that the election petitioner had requested for his voluntary retirement with effect from 31.03.2014 with granting promotion to the post of Superintendent Of Police. He has further stated that petitioner had also made a communication stating therein that if no decision is taken regarding voluntary retirement by 31.03.2014 then he may resign. Thereafter, he has further stated that the Deputy Secretary, Home (Police) Department had written a letter to the petitioner stating that his representation for voluntary retirement was conditional because he had asked for voluntary retirement with promotion to the post of Superintendent Of Police. Accordingly , he was intimated to do the needful. In his cross- examination P.W. I has answered that petitioner had sent a letter on 1st April , 2014 indicating

about his resignation with effect from the same date whereupon letters were sent to the Vigilance Department and Building Department for vigilance clearance and no dues, which was necessary before acceptance of resignation. He has also answered to the question asked by the election petitioner in his cross -examination that notification to the extent of his voluntary retirement was issued on 16.02.2015. P.W. 1 was also cross-examined on behalf of the respondent no. 2 / Returning Officer-cum-Collector and in his further cross- examined P.W.1 has stated that petitioner submitted an application for V.R.S. on 31st December 2013 and again resignation letter was sent on 1st April, 2014. A letter was sent on 9th May, 2014 and reminder on 11th July, 2014 to the Police Headquarter asking for no dues certificate. Another letter was sent on 9th May, 2014 to the Vigilance Department asking for vigilance clearance. Letters were sent on 12th August, 2014 and reminder on 24th September, 2014 to the Police Headquarter demanding the required information. The petitioner was asked through letter dated 3rd November, 2014 to give a declaration about no dues. Reminders were again sent on 3rd November, 2014 to the Vigilance Department. A letter was sent on 18th December, 2014 to the Executive Engineer of the Department asking for no dues and a letter was sent on the same date to the Financial Personnel Claim Cell asking for no dues. P.W. 1 has reiterated in his cross —examination that the election petitioner was holding post of profit on 19.04.2014 i.e. the date of submission of nomination paper and on 21.04.2014 i.e. the date of rejection of nomination papers and at that point of time the election petitioner was on the post of Deputy Superintendent Of Police. In the deposition on affidavit of election petitioner who was examined as P.W. 2 the election petitioner has reiterated that he had resigned from his post on 01.04.2014 after his representation for voluntary retirement with effect from 31.03.2014 was not accepted by the State Government. In paragraph no. 8 of his deposition on affidavit he has stated that on the date of scrutiny i.e. on 21.04.2014 the Returning Officer suddenly demanded the papers regarding acceptance of his resignation- letter by the State Government however, in his cross- examination the P.W. 2 i.e. the election petitioner namely, Sri Ram Niranjana Roy in specific term has admitted that on the date he presented his nomination papers his resignation was not accepted and his voluntary retirement from service was accepted now. It was accepted with effect from February, 2015. Of -course deposition on affidavit of Sri Ravindra Jha who was cited as a witness in the list of witnesses submitted by the petitioner was brought on record he was not tendered even either to accept his signature on affidavit or for cross —examination. For just decision in the matter this Court has also perused his affidavit. In the said affidavit he has reiterated that on the date of scrutiny i.e. on 21.04.2014 the Returning Officer suddenly demanded paper regarding acceptance of resignation-letter otherwise, he has reiterated about the fact that the election petitioner had tendered resignation on 01.04.2014.

9. Sri Sidharth Prasad, learned counsel who has appeared on behalf of the respondent no. 2 i.e. Returning Officer - cum- Collector, Sitamarhi has argued that in view of the evidences brought on record it is evident that on the date of either filing of nomination papers or on the date of scrutiny the petitioner was not in a position to satisfy that either his application for voluntary retirement or his resignation from Government service was accepted by the competent authority. Even in his cross-examination election petitioner has categorically accepted that on the date of either nomination or scrutiny his resignation was not accepted nor his voluntary retirement was accepted and finally, his resignation was accepted with effect from

February, 2015 whereas, nomination papers were filed on 19.04.2014 and scrutiny was held on 21.04.2014. He submits that in any event on the date of filing of nomination or on the date of scrutiny he had not ceased to be a Government Servant and since he was holding a post of profit in the Government of Bihar in view of Article 102 (1) (a) of the Constitution of India he was not eligible to contest the election in question and as such, the Returning Officer had rightly rejected his nomination paper on the date of scrutiny. It has already been noticed that in the said election Sri Ram Kumar Sharma was elected as the returned candidate however, he has chosen not to appear in the present proceeding and as such, the case has proceeded *ex -parte* against him.

10. So far as **Ramesh Rout Case (Supra)** is concerned the petitioner may not get any benefit from the said judgment. In the said case there was some defect in signing Form A and B in *ink*, which was curable after being informed by the Returning Officer at the time of scrutiny of the nomination paper whereas, in the present case it is admitted that on the date of nomination the petitioner had not ceased to be a Government Servant in absence of acceptance of his application for voluntary retirement or resignation- letter. So far application for voluntary retirement of the petitioner is concerned which was submitted on 31st December, 2013 it is evident that application for voluntary retirement of the petitioner was conditional. He was making prayer for allowing him to take voluntary retirement after promoting him as Superintendent Of Police from the post of Deputy Superintendent of Police. In normal course only those applications for voluntary retirement can be entertained wherein there is no condition. In a case of conditional voluntary retirement application, principle of deemed acceptance of such voluntary retirement after expiry of three months may not be applicable since acceptance of voluntary retirement is dependent on fulfillment of the conditions imposed in the application for voluntary retirement. In view of this proposition and peculiar facts of the present case even petitioner may not get any benefit. So far **Dinesh Chandra Sangma Case (Supra)** is concerned, the said cash has got no relevance for adjudication of the present case. In the said case notice for voluntary retirement was without any condition 'whereas, in the present case the petitioner had tendered application for V.R.S. with condition that he should be promoted as Superintendent Of Police. Similarly, the petitioner may not get any benefit from **Sayed Muzaffar Mir Case i.e. 1994 AIR SCW 4228 Union of India and others v. Sayed Muzaffar Mir**. In the present case the petitioner had submitted application for voluntary retirement on condition of granting him promotion as Superintendent Of Police which was also replied by the Department that since it was conditional it may not be accepted. So far **Shibu Soren Case (Supra)** is concerned again it has got no relevance for adjudication of the present case. In the present case the petitioner was obviously holding a post of profit in the Government of Bihar and as such, he was disqualified ! to be a candidate in view of the provisions contained in Article 10(1)(a) of the Constitution of India. So far **Ashok Kumar Bhattacharyya case i.e. AIR 1985 SUPREME COURT 211 Ashok Kumar Bhattacharyya v. Ahoy Biswas and others** is concerned, in the said case the candidate was an Accountant —in- charge in Agartala Municipality which was considered by the Hon'ble Apex Court to be not a Government whereas, in the present case the petitioner was continuing as Dy. S.P. in the Government of Bihar. The election petitioner had also raised a

plea that in view of Section 36 (5) of the R.P. Act it was necessary to allow time to the election petitioner to rectify the defects in the nomination papers on the date of its 'scrutiny. So far provision contained in Section 36 (5) of the R.P. Act is concerned it is very clear that the Returning Officer while conducting scrutiny on the appointed date shall not allow any adjournment of the proceedings however, proviso suggests that if objection is raised by the Returning Officer the concerned candidate may be allowed time to rebut it not later than the next date but one following the (date fixed for scrutiny. Even for the time being if it is assumed that any error was committed by the Returning Officer in not granting further time, in any event this error was not sufficient for interference with the election process. In the present case even till the date of hearing of this election petition the election petitioner was not in a position to satisfy that on the date of filing nomination papers or on the date of scrutiny of the nomination papers he was not a Government Servant rather in his cross-examination the election petitioner, who was examined as P.W. 2, himself has accepted that his voluntary retirement was accepted with effect from the month of February, 2015 whereas in the case nomination paper was filed on 19.04.2014 and scrutiny was conducted on 21.04.2014 on which date his nomination in form nos. 38 and 39 was rejected. In form no. 38 and 39 which have been brought on record as Annexure VII and VIIA to the present petition in categorical terms it has been stated as follows:

"...संवीक्षा के क्रम में पाया गया की अभ्यर्थी द्वारा राज्य सरकार के अधीन दि 21/4/14 को लाभ का पद धारण करते हैं। संवीक्षा की तिथि तक धारित पद से दिये गये त्याग पत्र को सरकार द्वारा मंजूरी संबंधी कागजात समर्पित नहीं कर सकें। संविधान के उद्धारण Sec 102(1) (क) के अनुसार भारत सरकार या राज्य सरकार के अधीन लाभ का पद धारण करने वाले व्यक्ति किसी सदन का सदस्य चुने जाने के लिए निरहित होगा। अतः राम निरंजन राय द्वारा दाखिल नाम निर्देशन पत्र संख्या (38) को अस्वीकृत किया जाता है।"

"संवीक्षा के क्रम में पाया गया की अभ्यर्थी द्वारा राज्य सरकार दि 21/4/14 को लाभ का पद धारण करते हैं। संवीक्षा की तिथि तक धारित पद से त्याग पत्र को राज्य द्वारा मंजूरी संबंधी कागजात समर्पित नहीं कर सकें। संविधान के उद्धारण Sec 102(1) (क) के अनुसार भारत सरकार या राज्य सरकार के अधीन लाभ का पद धारण करने वाले व्यक्ति किसी सदन का सदस्य चुने जाने के लिए निरहित होगा। अतः राम निरंजन राय द्वारा दाखिल नाम निर्देशन पत्र संख्या (39) को अस्वीकृत किया जाता है।"

11. On perusal of the evidences as well as leadmgs all the aforesaid issues which were framed are decided arinst the petitioner.

12. On the basis of evidences on record it is established that either on the date of filing nomination papers or on the date of scrutiny the petitioner had not brought any letter issued on behalf of the Government to show either acceptance of his voluntary retirement or acceptance of his resignation letter and as such, on the said date the petitioner was holding an office of profit under the Government of Bihar. Nor in the present proceeding any document has been brought on record to show that any notification or order was issued by the Parliament not to disqualify such office. It would be appropriate to incorporate provisions contained in Article 102 of the Constitution of India which is as follows:-

"102. Disqualifications for membership.- (1) A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament —

- (a) *if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder;*
- (b) *if he is of unsound mind and stands so declared by a competent court;*
- (c) *if he is an undischarged insolvent;*

- (d) *if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgment of allegiance or adherence to a foreign State;*
- (e) *if lie is so disqualified by or under any law made by Parliament.*

(2). A person shall be disqualified for being a member of either House of Parliament if lie is so disqualified under the Tenth Schedule."

13. In view of the fact that the election petitioner was occupying an office of profit under the Government of Bihar on the date of nomination as well as scrutiny, his nomination papers was rightly rejected by the Returning Officer- cum —Collector, 05-Sitamarhi Parliamentary Constituency. Accordingly, the election petition stands dismissed.

(Rakesh Kumar)

Prafil/-

AFR/NAFR	NAFR
CAV DATE	02-05-2017
Uploading Date	22 -06-2017
Transmission Date	NA

आदेश से,
सुमित मुखर्जी,
प्रधान सचिव,
भारत निर्वाचन आयोग।

ELECTION COMMISSION OF INDIA

NOTIFICATION

Nirvachan saclan, Ashoka Road New Delhi-110001/ Dated 8th August, 2017, 17 Bhadrapada, 1940 (Saka)

No. 82/ES-1/EP/(4/2014)/BR-HP/2017 : In pursuance of Section 106(b) of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes Order dated the 21st June, 2017 of the High Court of Judicature at Patna in Election Petition No. 4 of 2014.

IN THE HIGH COURT OF JUDICATURE AT PATNA

Election Petition No.4 of 2014

=====

Ram Niranjana Roy son of Shri Rameshwar Roy, resident of N6, Officers' Flat, New Punaichak, Patna-23 and President of Rasshtravadi Loktantrik Party

Petitioner/s

Versus

1. The State of Bihar through Chief Secretary (Deleted)
2. Dr. Pratima, Returning Officer, 05- Sitamarhi Parliamentary Consistency-cum District Magistrate, Sitamarhi (Bihar)
3. Chief Electoral Office, 7 Mangals Road, Patna (Deleted)
4. Chief Election Commissioner, Nirvachan Sadan, Ashoka Road, New Delhi (Deleted)
5. Principal Secretary, Home (Police) Department, Government of Bihar, Patna (Deleted)

6. Ram Kumar Sharma son of Mahesh Prasad Sharma, Village- Nanpur, TolaBegaha, P.O.-Sirsi, P.S.-Nanpur, District- Sitamarhi, the returned candidate

Respondent/s

Appearance :

For the Petitioner/s Mr. Ram Niranjana Roy (in person)

For the Respondent No. 2: Mr. Sidhartha Prasad

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

CAV JUDGMENT

Date: 21 -06-2017

1. The present application was filed under Section 80, 80A and 81 of the Representation of People Act, 1951 (hereafter referred to as the "R.P. Act") read with Article 329(b) of the Constitution of India for the following reliefs:-

- (i) *To hold and declare that the rejection of nomination papers nos. 38 and 39 of the petitioner by Returning Officer-cum-District Magistrate, Sitamarhi/ Respondent No. 2 in the said election is bad in law and fit to be set aside.*
- (iv) *To hold and declare the election of the returned candidate/ Respondent No. 6 front (15-Sitamarhi Parliamentary Constituency void.*
- (v) *To hold and declare that pursuant to the election for 05-Sitamarhi Parliamentary constituency being void, the Election Commission Of India shall hold fresh election for it."*

2. Short fact of the case is that the petitioner was a Candidate for election of Lok Sabha, which was scheduled to be held in the year 2014 for 05 -Sitamarhi Parliamentary Constituency. The election process was initiated on 12.04.2014 and election was held on 07.05.2014. Thereafter, result was declared on 16.05.2014. The petitioner had filed nomination paper on 19.04.2014 as a candidate of Rashtravadi Loktantrik Party for the said election. The petitioner was an Officer of Bihar Police Service and also President of Bihar Police Seva Sangh. He was lastly posted as Deputy Superintendent of Police, Criminal Investigation Department, Bihar, Patna. It has been stated in the petition that he was fighting for his promotion to the rank of Superintendent Of Police and to the Cadre of Indian Police Service on the plea that Officers of his batch were already promoted to the rank of Superintendent of Police as well as to the Cadre of Indian Police Service. The election petitioner vide his letter dated 31.12.2013 addressed to the Principal Secretary, Home (Police) Department, Government of Bihar intimated for voluntary retirement with effect from 31.03.2014 after granting him promotion to the rank of Superintendent Of Police from 03.02.2009. The said application for voluntary retirement was given three months before, but since he received no response from the Department in respect of his intimation of voluntary retirement, he sent another letter on 25.02.2014 to the Principal Secretary, Home (Police) Department, Government of Bihar stating therein that he was resigning from his post after 31.03.2014, if application for voluntary retirement was not accepted by the Government. Thereafter, the petitioner was informed vide letter no. 2165 dated 12.03.2014 issued by the Deputy Secretary, Home (Police) Department, Bihar that his application for voluntary retirement was conditional and the post of Superintendent Of Police belongs to the Cadre of Indian Police Service. The petitioner thereafter replied and reiterated that he may be allowed voluntary retirement with effect from 31.03.2014 after giving him promotion to the post of Superintendent Of Police, or

otherwise, he would resign from his post after 31.03.2014. Thereafter, the petitioner tendered his resignation from his post on 01.04.2014 and he joined a Political Party named as Rashtravadi Loktantrik Party on 02.04.2014. He decided to contest the Parliamentary Election of 2014 from 05- Sitamarhi Parliamentary Constituency and he filed nomination papers on 19.04.2014 as a candidate of Rashtravadi Loktantrik Party before the Returning Officer- cum -District Magistrate , Sitamarhi. Along with his nomination papers he attached photo copy of resignation - letter. Thereafter, the Returning Officer issued a *check- list* on 19.04.2014 itself. It has been pleaded in the petition that as per the *check- list* all required documents were filed with the nomination papers and no document was to be filed further. However, on 21.04.2014 which was the date of scrutiny of the nomination papers, the Returning Officer- cum- District Magistrate, Sitamarhi rejected nomination papers nos. 38 and 39 of the petitioner mentioning therein that petitioner was holding an office of profit on 21.04.2014 under the State Government and he had not submitted papers regarding acceptance of his resignation- letter by the Government. .After rejection of nomination papers of the petitioner the election process proceeded and held on scheduled date and in the said election one Sri Ram Kumar Sharma was declared as the returned candidate. Initially, the petitioner, alter rejection of his nomination papers, had filed a writ petition vide CWJC No. 8451 of 2014, which stood dismissed on 09.05.2014 primarily on the ground that in view of the provisions contained in Article 329(b) of the Constitution of India in election dispute writ petition was not maintainable. Thereafter, the petitioner filed the present election petition on 30.6.2014. Initially, the petitioner had arrayed six persons as respondents in the following seriatim:-

- (1) The State of Bihar Though Chief Secretary.
- (2) Dr. Pratima, Returning Officer, 05-Sitamarhi Parliamentary Constituency-cum-District Magistrate , Sitamarhi (Bihar).
- (3) Chief Electoral Officer, 7 Mangals Road, Patna
- (4) Chief Election Commissioner, Nirvachan Sadan, Ashoka Road, New Delhi
- (5) Principal Secretary, Home (Police) Department Government of Bihar, Patna
- (6) Ram Kumar Sharma, son of Mahesh Prasad Sharma, village-Nanpur, Tola-Begaha, P.O.-Sirsi, P.S.-Nanpur, District- Sitamarhi, the returned candidate"

3. Since number of unnecessary persons were added as respondents, the stamp reporter had pointed out defects. Finally. the petitioner with the permission of the court deleted the names of respondent nos. 1, 3, 4 and 5 from the record. The petitioner after filing an affidavit was permitted to appear in person. Finally , by order dated 19.02.2015 after valid service of notice on two surviving respondents, after appearance of respondent no. 2 vide order dated 19.02.2015 the court decided to proceed ex -parte against the returned candidate i.e. Sri Ram Kumar Sharma, who despite valid service of notice had not appeared and after hearing the parties by the said order i.e. the order dated 19.02.2015 following issues were framed:-

- "1. Whether the election petition (correctly petitioner) can be held holding an office of profit on 21.04.2014 under the State Government on the date of filing of his nomination papers i.e. 19.04.2014 for which scrutiny was held on 21.04.2014 justifying rejection of his nomination papers?**
- 2. Whether the nomination paper filed by the election petitioner was improperly rejected by the Returning Officer of 05 Sitamarhi Parliamentary Constituency?**
- 3. Whether the demand of the paper with regard to acceptance of resignation letter of the petitioner by the State Government made by the Returning Officer —cum-District Magistrate was sudden and uncalled for?**
- 4. Whether the letter dated 31.12.2013 was a valid offer of voluntary retirement from the service of the State and the respondent State was bound to accept the same?"**

4. Since in the election petition certain facts were made in paragraph nos. 16 to 20 of the election petition against the Returning Officer, on the prayer of petitioner, he was allowed not to delete the name of respondent no. 2/ Returning Officer- cum - District Magistrate from the record and as such, in the present case the Returning Officer -cum -District Magistrate, Sitamarhi appeared and filed a written statement justifying the rejection of nomination papers of the election petitioner. In the case besides filing list of documents, on behalf of the election petitioner list of witnesses was also filed. The list of witnesses filed by the election petitioner contains the following names :-

(a) List of official witnesses:-

- (i) Dr. Pratima, Returning Officer, 05-Sitamarhi Parliamentary Constituency-cum-District Magistrate, Sitamarhi, (Bihar)/ respondent no. 2
- (ii) Mr. Amir Subhani, Principal Secretary , Home (Police) Department, Government of Bihar, Patna

(b) List of non -official witnesses:-.

- (i) Sri Ravindra Jha, son of Jiwachha Jha, village Paroha, P.O.- Parasauni, P.S. -Dumra, District -Sitamarhi
- (ii) Sri Sanjit Raut, son of Sri Jaikun Raut, Village-Hanuman Nagar, P.O.- Lalpur, P.S. - Nanpur, district - Sitamarhi
- (iii) Sri Neeraj Kumar Son of Sri Rajakumar Jha, village-Paroha, P.O.- Parasauni, P.S.-Dumra, District - Sitamarhi .

5. During trial of the present election petition from the list of witnesses submitted on behalf of the election petitioner only one official witness namely Mr. Amir Subhani, Principal Secretary, Home (Police) Department, Government of Bihar, Patna was examined and cross- examined, however, none of other witnesses mentioned in the list of witnesses submitted on behalf of the petitioner was examined nor the election petitioner bothered to take effective steps for getting them examined as witnesses. Besides one official witness the election petitioner himself got examined as P.W. 2. So far other cited witnesses are concerned, deposition on affidavit of one Sri Ravindra Jha was brought on record, however during trial he was not produced either to identify his signature on his deposition on affidavit, which has been brought on record nor he was tendered for his cross- examination.

6. Since all the four issues, which were framed in the present case are inter-related, all the issues are required to be dealt with conjointly. The election petitioner who has appeared in person has argued that once he had tendered application for his voluntary retirement on 31.12.2013, after expiry of three months even in case of non -acceptance of his application for voluntary retirement, it was deemed to be accepted, and as such, there was no further requirement to produce any document regarding acceptance of his application for voluntary retirement and on 31.03.2014 he had ceased to be a Government Servant. Accordingly, he was not to be treated as disqualified under Article 102(1)(a) of the Constitution of India from contesting the election. To substantiate his submission that after expiry of three months from the date of submission of his application for voluntary retirement he had ceased to be Government Servant, he has placed reliance on a judgment of the Hon'ble Apex Court reported in AIR 1978 SC 17 DINESH CHANDRA SANGMA *Versus* STATE OF ASSAM AND OTHERS. He has argued that after submission of nomination papers i.e. on 19.04.2014, had there been any defect in the nomination papers, those defects were required to be indicated in the *check- list* which was issued by the Returning Officer after submission of nomination papers, nor petitioner was asked to produce any letter either with respect to acceptance of his application for voluntary retirement or acceptance of his resignation-letter. He submits that even after receiving no response regarding acceptance of his voluntary retirement, the petitioner on 1st April, 2014 had tendered resignation- letter, however, the election petitioner was never asked by the Returning Officer to satisfy her regarding the judgments that he was not a Government Servant on the date of filing of nomination papers. According to the election petitioner after issuance of *check- list* on 19.04.2014 suddenly on the date (1) of scrutiny of nomination papers i.e. on 21.04.2014 the Returning Officer asked him to produce letter of acceptance of his resignation- letter. Though the petitioner requested for granting some time to apprise her with the legal position, his nomination papers in form nos. 38 and 39 was rejected vide Annexure VII and VIIA to the election petition, which has been brought on record along with verification of the election petitioner. He has argued that in view of Section 36 (5) of the R.P. Act it was duty on the part of the Returning Officer to grant some time to enable the election petitioner to satisfy the Returning Officer with the rulings of the Supreme Court, however, contrary to the statutory provisions, his nomination papers were rejected. He has placed reliance on (2012) 1 SCC 762 RAMESH ROUT *Versus* RABINDRA NATH ROUT on the point that had there been any missing documents in the nomination papers, in the *check- list* those facts were required to be incorporated, however on 19.04.2014 after submission of nomination papers the check-list was issued in which no infirmity was shown. He has also placed reliance on AIR 2001 SC 2583 **Shibu Soren v. Dayanand Sahay** on the point that merely on the ground that his resignation was not accepted it will not be deemed that he was holding an office of profit on the date of either submission of nomination papers or scrutiny of nomination papers. Besides the aforesaid judgments the petitioner has also referred other judgments which were noticed by this Court however, considering the fact that those decisions were not having any bearing for adjudication of the present case, this Court is refrained from incorporating all such case laws.

7. In the present case the respondent no. 2/ the Returning Officer —cum-Collector, Sitamarhi has filed a written statement wherein it has been indicated that election petitioner had filed nomination papers as a candidate for election to the House Of People i.e. Lok Sabha for 05- Sitamarhi Parliamentary Constituency on 19.4.2014 in last General Election of 2014 but since the election petitioner had been an officer of Bihar Police Service he was required to submit such documents on the date of filing of

nomination papers, which might prove that election petitioner was not continuing on the post of any profit on the date of nomination as a candidate of the General Election to the Lok Sabha, 2014. However, during scrutiny of the nomination papers filed by the candidates for Lok Sabha Election of 2014 it was found that election petitioner had not submitted any document relating to acceptance of his resignation from the Government Service as a proof of discontinuation from the post of profit which the petitioner was holding, so the Returning Officer found that the petitioner cannot be accepted as a candidate for election to the House Of People for 05 - Sitamarhi Parliamentary Constituency as per the provisions laid down under Article 102 (1) (a) of the Constitution of India and hence nomination of the petitioner was rejected by the Returning Officer.

8. During trial of the case in the deposition of P.W. 1, who is official witness and was examined as per list of witnesses submitted by the election petitioner, it is evident that on the date of submission of nomination papers or on the date of scrutiny of nomination papers the petitioner had not ceased to be a Government Servant. In the Examination- in -Chief of P.W. 1 Mr. Amir Subhani, Principal Secretary, Department of Home, lie has stated that the election petitioner had requested for his voluntary retirement with effect from 31.03.2014 with granting promotion to the post of Superintendent Of Police. He has further stated that petitioner had also made a communication stating therein that if no decision is taken regarding voluntary retirement by 31.03.2014 then he may resign. Thereafter, he has further stated that the Deputy Secretary, Home (Police) Department had written a letter to the petitioner stating that his representation for voluntary retirement was conditional because he had asked for voluntary retirement with promotion to the post of Superintendent Of Police. Accordingly, he was intimated to do the needful. In his cross- examination P.W. I has answered that petitioner had sent a letter on 1st April, 2014 indicating about his resignation with effect from the same date whereupon letters were sent to the Vigilance Department and Building Department for vigilance clearance and no dues, which was necessary before acceptance of resignation. He has also answered to the question asked by the election petitioner in his cross -examination that notification to the extent of his voluntary retirement was issued on 16.02.2015. P.W. 1 was also cross-examined on behalf of the respondent no. 2 / Returning Officer-cum-Collector and in his further cross- examined P.W.1 has stated that petitioner submitted an application for V.R.S. on 31st December 2013 and again resignation letter was sent on 1st April, 2014. A letter was sent on 9th May, 2014 and reminder on 11th July, 2014 to the Police Headquarter asking for no dues certificate. Another letter was sent on 9th May, 2014 to the Vigilance Department asking for vigilance clearance. Letters were sent on 12th August, 2014 and reminder on 24th September, 2014 to the Police Headquarter demanding the required information. The petitioner was asked through letter dated 3rd November, 2014 to give a declaration about no dues. Reminders were again sent on 3rd November, 2014 to the Vigilance Department. A letter was sent on 18th December, 2014 to the Executive Engineer of the Department asking for no dues and a letter was sent on the same date to the Financial Personnel Claim Cell asking for no dues. P.W. 1 has reiterated in his cross —examination that the election petitioner was holding post of profit on 19.04.2014 i.e. the date of submission of nomination paper and on 21.04.2014 i.e. the date of rejection of nomination papers and at that point of time the election petitioner was on the post of Deputy Superintendent Of Police. In the deposition on affidavit of election petitioner who was examined as P.W. 2 the election petitioner has reiterated that he had resigned from his

post on 01.04.2014 after his representation for voluntary retirement with effect from 31.03.2014 was not accepted by the State Government. In paragraph no. 8 of his deposition on affidavit he has stated that on the date of scrutiny i.e. on 21.04.2014 the Returning Officer suddenly demanded the papers regarding acceptance of his resignation- letter by the State Government however, in his cross- examination the P.W. 2 i.e. the election petitioner namely, Sri Ram Niranjana Roy in specific term has admitted that on the date he presented his nomination papers his resignation was not accepted and his voluntary retirement from service was accepted now. It was accepted with effect from February, 2015. Of -course deposition on affidavit of Sri Ravindra Jha who was cited as a witness in the list of witnesses submitted by the petitioner was brought on record he was not tendered even either to accept his signature on affidavit or for cross —examination. For just decision in the matter this Court has also perused his affidavit. In the said affidavit he has reiterated that on the date of scrutiny i.e. on 21.04.2014 the Returning Officer suddenly demanded paper regarding acceptance of resignation-letter otherwise, he has reiterated about the fact that the election petitioner had tendered resignation on 01.04.2014.

9. Sri Sidharth Prasad, learned counsel who has appeared on behalf of the respondent no. 2 i.e. Returning Officer - cum- Collector, Sitamarhi has argued that in view of the evidences brought on record it is evident that on the date of either filing of nomination papers or on the date of scrutiny the petitioner was not in a position to satisfy that either his application for voluntary retirement or his resignation from Government service was accepted by the competent authority. Even in his cross-examination election petitioner has categorically accepted that on the date of either nomination or scrutiny his resignation was not accepted nor his voluntary retirement was accepted and finally, his resignation was accepted with effect from February, 2015 whereas, nomination papers were filed on 19.04.2014 and scrutiny was held on 21.04.2014. He submits that in any event on the date of filing of nomination or on the date of scrutiny he had not ceased to be a Government Servant and since he was holding a post of profit in the Government of Bihar in view of Article 102 (1) (a) of the Constitution of India he was not eligible to contest the election in question and as such, the Returning Officer had rightly rejected his nomination paper on the date of scrutiny. It has already been noticed that in the said election Sri Ram Kumar Sharma was elected as the returned candidate however, he has chosen not to appear in the present proceeding and as such, the case has proceeded *ex -parte* against him.

10. So far as **Ramesh Rout Case (Supra)** is concerned the petitioner may not get any benefit from the said judgment. In the said case there was some defect in signing Form A and B in *ink*, which was curable after being informed by the Returning Officer at the time of scrutiny of the nomination paper whereas, in the present case it is admitted that on the date of nomination the petitioner had not ceased to be a Government Servant in absence of acceptance of his application for voluntary retirement or resignation- letter. So far application for voluntary retirement of the petitioner is concerned which was submitted on 31st December, 2013 it is evident that application for voluntary retirement of the petitioner was conditional. He was making prayer for allowing him to take voluntary retirement after promoting him as Superintendent Of Police from the post of Deputy Superintendent of Police. In normal course only those applications for voluntary retirement can be entertained wherein there is no condition. In a case of conditional voluntary retirement application, principle of deemed acceptance of such voluntary retirement after expiry of three months may not be applicable since acceptance

of voluntary retirement is dependent on fulfillment of the conditions imposed in the application for voluntary retirement. In view of this proposition and peculiar facts of the present case even petitioner may not get any benefit. So far **Dinesh Chandra Sangma Case (Supra)** is concerned, the said cash has got no relevance for adjudication of the present case. In the said case notice for voluntary retirement was without any condition 'whereas, in the present case the petitioner had tendered application for V.R.S. with condition that he should be promoted as Superintendent Of Police. Similarly, the petitioner may not get any benefit from Sayed Muzaffar Mir Case i.e. **1994 AIR SCW 4228 Union of India and others v. Sayed Muzaffar Mir**. In the present case the petitioner had submitted application for voluntary retirement on condition of granting him promotion as Superintendent Of Police which was also replied by the Department that since it was conditional it may not be accepted. So far Shibu Soren Case (Supra)) is concerned again it has got no relevance for adjudication of the present case. In the present case the petitioner was obviously holding a post of profit in the Government of Bihar and as such, he was disqualified ! to be a candidate in view of the provisions contained in Article 10(1)(a) of the Constitution of India. So far Ashok Kumar Bhattacharyya case i.e. **AIR 1985 SUPREME COURT 211 Ashok Kumar Bhattacharyya v. Ahoy Biswas and others** is concerned, in the said case the candidate was an Accountant —in- charge in Agartala Municipality which was considered by the Hon'ble Apex Court to be not a Government whereas, in the present case the petitioner was continuing as Dy. S.P. in the Government of Bihar. The election petitioner had also raised a plea that in view of Section 36 (5) of the R.P. Act it was necessary to allow time to the election petitioner to rectify the defects in the nomination papers on the date of its 'scrutiny. So far provision contained in Section 36 (5) of the R.P. Act is concerned it is very clear that the Returning Officer while conducting scrutiny on the appointed date shall not allow any adjournment of the proceedings however, proviso suggests that if objection is raised by the Returning Officer the concerned candidate may be allowed time to rebut it not later than the next date but one following the (date fixed for scrutiny. Even for the time being if it is assumed that any error was committed by the Returning Officer in not granting further time, in any event this error was not sufficient for interference with the election process. In the present case even till the date of hearing of this election petition the election petitioner was not in a position to satisfy that on the date of filing nomination papers or on the date of scrutiny of the nomination papers he was not a Government Servant rather in his cross -examination the election petitioner, who was examined as P.W. 2, himself has accepted that his voluntary retirement was accepted with effect from the month of February , 2015 whereas in the case nomination paper was filed on 19.04.2014 and scrutiny was conducted on 21.04.2014 on which date his nomination in form nos. 38 and 39 was rejected. In form no. 38 and 39 which have been brought on record as Annexure VII and VIIA to the present petition in categorical terms it has been stated as follows:

"...संवीक्षा के क्रम में पाया गया की अभ्यर्थी द्वारा राज्य सरकार के अधीन दि 21/4/14 को लाभ का पद धारण करते हैं। संवीक्षा की तिथि तक धारित पद से दिये गये त्याग पत्र को सरकार द्वारा मंजूरी संबंधी कागजात समर्पित नहीं कर सकें। संविधान के उद्धारण Sec 102(1) (क) के अनुसार भारत सरकार या राज्य सरकार के अधीन लाभ का पद धारण करने वाले व्यक्ति किसी सदन का सदस्य चुने जाने के लिए निरहित होगा। अतः राम निरंजन राय द्वारा दाखिल नाम निर्देशन पत्र संख्या (38) को अस्वीकृत किया जाता है।"

"संवीक्षा के क्रम में पाया गया की अभ्यर्थी द्वारा राज्य सरकार दि 21/4/14 को लाभ का पद धारण करते हैं। संवीक्षा की तिथि तक धारित पद से त्याग पत्र को राज्य द्वारा मंजूरी संबंधी कागजात समर्पित नहीं कर सकें। संविधान के उद्धारण Sec 102(1) (क) के अनुसार भारत सरकार या राज्य सरकार के अधीन लाभ का पद धारण करने वाले व्यक्ति किसी सदन का सदस्य चुने जाने के लिए निरहित होगा। अतः राम निरंजन राय द्वारा दाखिल नाम निर्देशन पत्र संख्या (39) को अस्वीकृत किया जाता है।"

13. On perusal of the evidences as well as leadmgs all the aforesaid issues which were framed are decided arinst the petitioner.

14. On the basis of evidences on record it is established that either on the date of filing nomination papers or on the date of scrutiny the petitioner had not brought any letter issued on behalf of the Government to show either acceptance of his voluntary retirement or acceptance of his resignation letter and as such, on the said date the petitioner was holding an office of profit under the Government of Bihar. Nor in the present proceeding any document has been brought on record to show that any notification or order was issued by the Parliament not to disqualify such office. It would be appropriate to incorporate provisions contained in Article 102 of the Constitution of India which is as follows:-

"102. Disqualifications for membership.- (1) A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament —

- (a) if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder;*
- (b) if he is of unsound mind and stands so declared by a competent court;*
- (c) if he is an undischarged insolvent;*
- (d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgment of allegiance or adherence to a foreign State;*
- (e) if he is so disqualified by or under any law made by Parliament.*

(2). A person shall be disqualified for being a member of either House of Parliament if he is so disqualified under the Tenth Schedule."

13. In view of the fact that the election petitioner was occupying an office of profit under the Government of Bihar on the date of nomination as well as scrutiny, his nomination papers were rightly rejected by the Returning Officer- cum —Collector, 05-Sitamarhi Parliamentary Constituency. Accordingly, the election petition stands dismissed.

(Rakesh Kumar)

Prafil/-

AFR/NAFR	NAFR
CAV DATE	02-05-2017
Uploading Date	22 -06-2017
Transmission Date	NA

By order,
SUMIT MUKHERJEE,
PRINCIPAL SECRETARY,
ELECTION COMMISSION OF INDIA.

अधीक्षक, सचिवालय मुद्रणालय,
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